



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 5055-99

21 October 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 19 October 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you reenlisted in the Marine Corps on 25 March 1982 as a SSGT (E-6). At the time of your reenlistment, you had completed more than 10 years of active service.

The record reflects that you served without incident until 13 December 1983 when you were convicted by special court-martial of stealing a cassette deck and taking mail addressed to another Marine. You were sentenced to confinement at hard labor for one month, reduction in rank to CPL (E-4), and a bad conduct discharge. On 27 January 1984 the convening authority approved the sentence, but suspended the confinement and bad conduct discharge for a period of one year from the date of his action. The Navy-Marine Corps Court of Military Review affirmed the findings and the sentence on 27 April 1984. The Court of Military Appeals denied review on 3 July 1984.

A vacation hearing pursuant to Uniform Code of Military Justice Article 72(b) was conducted on 21 January 1984 based on evidence presented that you had stolen merchandise valued at about \$250 from the post exchange. The special court-martial convening

authority found your actions were a serious violation of probation. Accordingly, the suspended period of confinement and the bad conduct discharge were ordered executed. You received the bad conduct discharge on 1 February 1985.

In its review of your application the Board conducted a careful search of your service record for any mitigating factors which might warrant a recharacterization of your bad conduct discharge. However, other than your four periods of prior honorable service, no justification for such a change could be found. Although your prior honorable service was notable, the Board concluded it was insufficient to warrant recharacterization of your discharge given your special court-martial conviction of theft. The Board noted the aggravating factor that you were given an opportunity to earn a discharge under honorable conditions but violated your probation by committing a further theft. Your conviction and discharge were effect in accordance with applicable law and regulations, and the discharge appropriately characterizes your fifth period of service. The Board concluded the discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director